

File Number  
CP03-030

Application Type  
Conditional Use Permit

Council District  
5 and 7

Planning Area  
Alum Rock

Assessor's Parcel Number(s): 486-11-001, -  
027, -032, -033, -034, -035, -036, -037,  
486-10-056, -057, -059, -062, -063, -  
064, -067, -068, -086, -087, -088, -089.

## STAFF REPORT

### PROJECT DESCRIPTION

Completed by: Elena Lee

Location: Southeast and southwest corners of Story and South King roads

Gross Acreage: 27.6

Net Acreage: 27.6

Net Density: N/A

Existing Zoning: CP Commercial Pedestrian and CN  
Commercial Neighborhood.

Existing Use: Commercial Retail Center

Proposed Zoning: No change proposed.

Proposed Use: Commercial Retail Center

### GENERAL PLAN

Completed by: EL

Land Use/Transportation Diagram Designation  
Neighborhood/Community Commercial, General Commercial and Medium  
Low Density Residential (8 DU/AC)

Project Conformance:  
☒ Yes ☐ No  
☒ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: EL

North: Story Road, Prusch Park and General  
Commercial

CP Commercial Pedestrian, CG Commercial General, CN  
Commercial Neighborhood and R-1-5 Residential

East: Single-Family Residential and Commercial

R-1-8 Single Family Residential, CO Commercial Office

South: Elementary School, Single Family Residential

R-1-8 Residential and R-2 Residential

West: Single Family Residential

R-1-8 Residential, R-1-5 Residential

### ENVIRONMENTAL STATUS

Completed by: EL

☐ Environmental Impact Report found complete (GP 2020 EIR certified 8/16/1994)

☐ Exempt

☐ Negative Declaration circulated on

☐ Environmental Review Incomplete

☒ Negative Declaration adopted on March 7, 2002

### FILE HISTORY

Completed by: EL

Annexation Title: Hillview No. 7 and Hillview No. 23

Date: January 2, 1957 and October 23, 1959

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval  
☒ Approval with Conditions  
☐ Denial  
☐ Uphold Director's Decision

Date:

Approved by: \_\_\_\_\_  
☐ Action  
☒ Recommendation

### APPLICANT/DEVELOPER/OWNER

City of San José Redevelopment Agency  
Attn: Ann Stedler  
50 W. San Fernando Street  
San José, CA 95113

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**PUBLIC AGENCY COMMENTS RECEIVED****Completed by: EL**

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**Department of Public Works**

See attached for memorandum from the Department of Public Works

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**Other Departments and Agencies**

See attached for memorandum from the Fire Department, the Police Department, the Valley Transportation Agency, the K.O.N.A. East Valley/680 Strong Neighborhoods Initiative Planning Staff, Lick Observatory and the City of San José Urban Runoff Coordinator

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**GENERAL CORRESPONDENCE**

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See attached email for correspondence from Sandina Bailo-Lape.

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicant is requesting a Conditional Use Permit (CUP) to allow construction of up to 262,100 square feet of retail space, including a drive-through pharmacy, 24-hour operation of a supermarket and drugstore drive-through, and off-site liquor sales by a new supermarket and/or general retailers. The Zoning Code requires a Conditional Use Permit for the 24-hour uses, off-site sales of alcohol and a drive-through. The Conditional Use Permit will also serve as a Site Development Permit for the new construction of up to 262,100 square feet of commercial retail buildings. The CUP would cover a site up to 27.6 gross acres located at the southeast and southwest corners of the intersection of Story and King Roads.

The project site includes two roughly rectangular-shaped parcels located south of Story Road, on both sides of King Road. The site is directly bordered by an elementary school to the south and single-family residences to the south, east and west. Prusch Park and commercial development are located to the north. The site, part of a larger Redevelopment project area, is located within the Story Road Neighborhood Business District and adjacent to the East Valley/680 and KONA Strong Neighborhoods Initiative (SNI) redevelopment areas. The project site is currently developed with 210,710 square feet of retail commercial buildings, consisting primarily of strip commercial buildings, including a drug store, markets and a convenience store.

The proposal is part of the Redevelopment Agency's (RDA) effort to revitalize all four corners of the Story and King intersection. This broader effort includes improvements to the area streetscapes and street capacity, Prusch Park, and existing developments. The goal of this project is to support the revitalization of an important area of San José. In an effort to create a retail center that will serve the needs of the local community and to revitalize the existing commercial center, RDA entered into a Disposition and Development Agreement (DDA) with Blake Hunt Ventures. As part of the Agreement, Blake Hunt Ventures San José, LLC would redevelop most of the two commercial centers with a mixture of new construction and upgrades to three existing buildings (R4, R5 and R10) (Please refer to the site plans for the building designations). The RDA would remodel and upgrade a fourth remaining building (M2) under a separate agreement which will be subject to a subsequent permitting process.

The project site was rezoned in February 2003 from CG Commercial General, CP Commercial Pedestrian and CN Commercial Neighborhood Zoning Districts to a reconfigured combination of CP Commercial Pedestrian

and CN Commercial Neighborhood to improve the zoning conformance of the existing structures on site and to facilitate redevelopment of the site. Additionally, two Special Use Permits have been approved for the demolition of 148,800 square feet: SP02-054 was approved on October 25, 2002 to demolish one 95,500 square foot commercial building, and SP03-015 was approved on July 11, 2003 to demolish eight retail buildings, totaling 59,200 square feet. The large commercial building has since been demolished, while the retail buildings remain on site pending final tenant relocation.

## PROJECT DESCRIPTION

This CUP application proposes three site plan options, which specifically cover the redevelopment of the southwest and southeast corners of the Story and King intersection. In all three, the project would replace approximately 306,200 square feet of commercial/retail use with up to 262,100 square feet of new one-story commercial/retail space, designed to meet the needs of the local community. The applicant proposes to build a shopping center anchored by two larger stores and eleven to fourteen smaller pad buildings placed along the perimeters for both corners. Both parcels would be redeveloped with landscaped parking lots and pedestrian plazas and walkways to accommodate vehicular and foot traffic. The project is designed to take advantage of its location by accommodating access for multiple transportation modes, including automobile, bicycle and pedestrian.

The proposal includes three options to facilitate flexibility for the developer because the combination of tenants has not yet been finally selected. The three options propose similar uses but different configurations. The key differences are the number and configuration of the buildings on the southeast parcel; with the southwest parcel remaining virtually unchanged.

- ? Option one proposes twelve buildings, totaling 239,000 square feet of new construction for the southeast parcel. The anchor for the southeast parcel would be a supermarket.
- ? Option two proposes ten buildings, totaling 262,100 square feet. A general retailer, including a garden center would anchor the southeast parcel.
- ? Option three proposes eleven buildings on the southeast parcel, for a total of up to 230,035 square feet, with a general retailer anchor.

Additionally, Option Three will include a new 18,000 square foot commercial pad building to be located between Building A1 and M5 on the southeast parcel, which is not currently shown on the site plan. The appearance and configuration of the new building will be similar to what is proposed at the same location in Option One. The applicant will be required to provide revised and updated site plan that meets the parking requirement of one space per 225 square feet of commercial space. As a condition of approval of this permit, the applicant will be required to submit complete revised plan set, including elevations of all new buildings.

Development of the southwest parcel would be identical for all three options. The cornerstone of the southwest parcel is the 51,000 square foot mercado (Building M1). The mercado, a public market and gathering place will accommodate up to approximately 210 small merchants. The anchor for the southeast parcel will be either a large general retailer or a supermarket. A pharmacy with a drive-through is also proposed for the southeast parcel.

Four buildings are proposed to be retained on site, including the two newer pad retail buildings located on the southwest parcel (R4 and R5), a small corner building at the corner of Bal Harbor and Story (R10) and existing Tropicana market building on the southwest corner (M2). As part of the project, the applicant is also requesting the demolition of 110,600 square feet of commercial buildings and the removal of 21 ordinance sized trees of various sizes and species.

The proposed development will provide the number of parking spaces required by the Zoning Ordinance for neighborhood shopping centers for all three site plan options. Option One requires 1068 parking spaces and would provide 1099 spaces. Option Two requires 1167 parking spaces and would provide 1472 parking spaces. Option Three will require 1050 parking spaces and would provide 1110 spaces. The Zoning Ordinance also allows a ten percent (10%) parking space reduction for sites located in a neighborhood business district. Although the project site is located within the Story Road Neighborhood Business District, the project is not requesting the reduction. Additionally, due the high volume of pedestrian activity already on site, it is anticipated that a substantial number of customers will continue to walk to the center.

The design treatment will visually connect the two parcels through the use of similar architecture, landscaping and trellised pedestrian walkways throughout the project. One important feature is the use of three gateway plazas designed to provide distinct points of entry, and to connect the center of each parcel and encourage access to and from Prusch Park. These three plazas located on the corners and additional plazas between buildings are designed to serve as gathering and recreational space. The proposal also designates a portion of the parking lot, located along the eastern edge of the southwest parcel, as a marketplace area. This area will be used as additional outdoor activity space for special events.

#### Revised Plans:

The attached plan set includes some pages that require corrections. As a condition of this Permit, the applicant will be required to submit revised plans to make several corrections to the plan set prior to the release of the permit. The changes include revised grading and drainage to show the correct configuration of driveways and the southbound left turn lane on King Road and elevation plans.

### **ENVIRONMENTAL REVIEW**

An Initial Study was prepared for this project and a Mitigated Negative Declaration was adopted by the Director of Planning on March 6, 2002. The Mitigated Negative Declaration includes mitigation measures for noise, air quality, water quality, geology and soils, traffic, biological resources, cultural resources, hazardous materials and land use. These mitigation measures will be included as conditions of approval. The mitigations include off-site street improvement to mitigate for potential traffic impacts and special construction techniques to mitigate for potential noise. The Mitigated Negative Declaration also addressed mitigation for the proposed demolition and removal of ordinance sized trees. The demolition of all buildings will be surveyed and treated for asbestos if found, and permits will be conditioned to require the recycling of scrap building materials where possible. The mitigation required for ordinance-sized tree is to provide four 24-inch box trees for every ordinance-sized tree removed. More than 96 trees (24-inch and 48-inch box) will be provided as mitigation.

### **GENERAL PLAN CONFORMANCE**

The southwest corner is designated Neighborhood/Community Commercial and General Commercial on the San José 2020 General Plan Land Use/Transportation Diagram. The southeast corner is designated General Commercial and Medium Low Density Residential (8 DU/AC). The proposed commercial uses are consistent with these commercial designations. A small portion of the site (0.35 gross acres) on the southwest parcel has a residential General Plan designation. However, the site is currently developed with a commercial use and has a commercial zoning designation. Redevelopment of the property with a similar commercial use may be considered to be in conformance with the General Plan. This Policy states that since parcels of two acres or less in size may be too small to be separately identified on a map of the scale of the official Land Use/Transportation Diagram, any developed parcel of two acres or less is deemed to be in conformance with the General Plan, regardless of how it is designated. The project is consistent with the existing pattern and character of the development of the neighborhood and the site has been and will be used in conformance with the zoning designation of the site.

## ANALYSIS

The primary issues for this project are conformance to the 1) Commercial Design Guidelines, 2) City Council Policy on Drive-Through uses, 3) City Council Policy on the Evaluation of 24-Hour uses and 4) City Council Outdoor Lighting Policy.

### Commercial Design Guidelines

As defined by the Commercial Design Guidelines (CDG), the proposed project is a Neighborhood Center. Neighborhood Centers are typified by a grocery/drug store anchor with a series of smaller shops and a gross square footage of less than 300,000 square feet. Pedestrian access is important around and inside a neighborhood center because they are typically placed within or near residential neighborhoods. The CDG acknowledges that the proximity of neighborhood centers to residential areas is a major design issue. In order to ensure that these centers are designed to complement an area, the CDG specifies building setbacks, site organization and building design as critical pieces to a well designed neighborhood commercial project.

### Building Setbacks:

The project meets the setback requirements of the respective zoning districts and also the intent of the setback standards set in the Commercial Design Guidelines. The project provides front setbacks that vary from 0 to 40 feet. Although a setback of 25 feet is recommended for Neighborhood Centers, the Guidelines also state that the front setback of new buildings from public streets should continue the prevailing setback pattern. The proposed setbacks of the new buildings conform to the setbacks that have been established by the existing buildings along Story Road. The CDG for neighborhood centers state that developments should maintain a 5-foot side setback for a non-residential interface and a 1½ foot setback for 1 foot of building height for a residential interface. However, the CDG has an exception for one-story commercial buildings. One-story commercial buildings may be placed at the setback applicable to the adjacent residential development. The proposed project would provide a minimum 30-foot setback and so exceeds the minimum required. The adjacent single-family residences are required to provide a 15-foot rear setback. All the buildings will also maintain a minimum five-foot internal building separation as recommended by the CDG.

### Site Organization:

The CDG state that neighborhood centers should have buildings carefully arranged to have a strong spatial and functional relationship to each other and that multiple buildings should be varied in size and mass. The proposed project carefully groups building together to accommodate pedestrian movement and spaces, while preserving space for landscaped parking lots. The site is organized to meet the demand for automobile parking spaces while maintaining a pedestrian-oriented design. The site provides substantial pedestrian amenities, such as landscaping, plazas and trellised 10-foot wide pedestrian walkways that connect the two parcels and various buildings across the site. The landscaped parking spaces are grouped together around the buildings providing immediate and convenient access to the stores, while the parking lot landscaping lends a unified theme. Landscaping has also been placed to visually connect the southeast and southwest parcels.

### Building Design:

The CDG have specific recommendations for building design. The Guidelines require varied facades and articulation. The proposed architecture is a modern Latin and Mediterranean theme designed to be reminiscent of buildings found in central Mexico. The buildings have been designed to vary in size and mass for visual interest. Careful attention has been given to the architectural details of buildings at the pedestrian level. The buildings are provided with clear glass display windows along the public streets and pedestrian areas to reinforce an active pedestrian-scale elevation. High quality materials were carefully chosen to reflect the Hispanic heritage of the area and to ensure durability.

### Residential Interface:

Another important issue identified by the Guidelines is the interface between a commercial development and adjacent residential use. It is important to design a development that respects and complements adjacent residential uses. If not designed well, commercial uses can easily intrude upon the privacy and peace of residences because commercial uses are higher intensity uses with typically higher levels of noise and associated traffic. The key feature of a good project interface is to design the project's perimeters to provide as little residential intrusion as possible. As part of the 30-foot building setback, the project proposes to maintain a 10-foot wide landscape strip along all property boundaries adjacent to residences, except the area immediately behind the existing building designated M2 where the existing building location and parking needs do not allow space for additional landscaping. Elsewhere, the project maintains and adds masonry screen walls to provide screening and sound attenuation for the adjacent residents. The driveway aisles located adjacent to the residences will be gated to limit circulation. The parking and circulation area located behind the buildings will be used only for overflow and employee parking.

Truck loading is also an important issue when there is a residential interface as loading can produce a lot of noise. The Commercial Design Guidelines state that loading docks, if fully enclosed, can be located a minimum of 50 feet away from residential structures or private rear yards. Due to the site configuration and proximity of residences, it is difficult to place loading docks away from the residential neighbors. The project does include some loading areas adjacent to residential properties, but all of these loading docks have been fully enclosed. Where feasible, loading docks have been consolidated together behind the buildings to minimize those spaces. Where proposed loading docks are located proximate to residences, a 10-foot wide landscape strip and masonry screen wall provide additional buffering for the residents. The permit will also be conditioned to prohibit loading dock activities adjacent to residential property lines between 10 PM and 7 AM. Thus, staff believes that the project substantially conforms to the intent of the CDG requirements by minimizing any potential negative noise or visual impacts.

### Drive-Through Uses

The City Council Policy on Drive-through Uses (see attached) has criteria that address the following issues to determine if a drive-through use is appropriate: traffic, noise, hours of operation, emission control, urban design, lighting and location. The project proposes a drive-through for the drugstore pharmacy on the southeast parcel (Building M3).

The drive-through will meet all criteria for traffic. The criteria include requirements for access from a major four-lane street and ingress/egress and stacking lanes that will not disrupt circulation on the site. The primary ingress and egress to the drive-through parking lot will be from Story Road, which is major six-lane street. The drive-through stacking lane is large enough to accommodate up to 6 cars in queue. Overflow will be directed to the parking lot adjacent to the drug store, away from public streets and major circulation aisles.

The pharmacy drive-through will also meet all noise criteria. The proposed CUP would be conditioned to require the drive-through not exceed the noise maximum of 60 decibels at a commercial property line or 55 decibels at a residential property line. The drive-through lane does not directly abut residential properties. A drive aisle, 10-foot landscape strip and a masonry wall separate the drive-through lane from the residences located to the east of the site by approximately 60 feet. The drive-through window will be conditioned to cease operation at 10:00 p.m. to meet the Policy's hours of operation criteria.

The Policy looks to prevent objectionable auto emissions from impacting the air quality where idling vehicles are proximate to pedestrians or residents. An east-west orientation of drive-through lanes is generally discouraged because of prevailing wind patterns; however, this orientation enables the full screening of the drive-through lane from the public street and it is the most reasonable orientation given

the constraints of the configuration of the site, existing buildings, and proximity to residences. It is also expected that a drive-through pharmacy will result in a very low volume of queuing and idling cars.

The drive-through lane has been designed to meet the Policy's urban design criteria. The one-story drive-through building is compatible with the shopping center and the overall neighborhood height and architecture. The lanes are screened from the public street by the building, and are buffered from residential properties by a 10-foot landscape strip drive aisle and a masonry screen wall. All onsite lighting shall conform to the Outdoor Lighting Policy (see below). Lights shall be shielded and reflected away from the neighboring residential uses.

The policy states that drive-through uses should be located at least 200 feet from residentially used, zoned or General Planned properties. The proposed use would be located less than 200 feet from an adjacent residential parcel. However, staff believes that in the context of the entire commercial project, the proposed location, placed away from areas on the site with very high pedestrian activity, would be appropriate for a drive-through use.

#### 24-Hour Uses

The Conditional Use Permit application proposes the 24-hour operation of a new supermarket (see building M4 on site plan). The application also proposes 24-hour use for the drive-through operation only of the proposed drugstore (Building M3). The City Council Policy on 24-hour uses has specific guidelines to determine if a 24-hour use is appropriate and whether it is compatible with surrounding land uses. The Guidelines establish the following criteria to determine compatibility: area use compatibility, use separation and outdoor activities. In addition the Guidelines also provide measures to reduce the potential negative impacts late night uses might impose on neighboring land uses.

The Policy states location is important and that 24-hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding areas. The location of the project site is a primarily commercial area bounded by two major streets that carry a large amount of traffic. Although residential uses are located to the east and south, the CDG identifies that this is potentially more problematic for more intensive 24-hour uses that produce more patron traffic and noise, such as convenience stores or take-out restaurants. Supermarkets and drugstores are not typically uses that encourage loitering, nor do they foster the late night use nuisance, such as littering or crime. In addition, a supermarket or drugstore operating during late night hours does not attract the same volume of customers as a bar, restaurant or nightclub.

The separation of uses is identified as an important guideline to minimize potential impacts on more sensitive neighboring uses, and 24-hour uses should generally not be located within 300 feet of residential. However, exceptions may be made on a case-by-case review of the specific circumstances of the site and proposed use, and its intensity, and other relevant criteria. The proposed 24-hour uses would be located less than 300 feet from residential properties. However, as stated above, supermarkets and drugstores are not late night uses that typically cause significant problems because they do not attract a high volume of customers who linger. The proposed 24-hour grocery store is contained within the larger commercial site. The customer entries for the use will be located on the building elevation opposite the residential properties. Based on these factors, staff has determined that it would be appropriate to apply an exception to the 300-foot separation for the new supermarket in this project.

The City Council Policy also specifies that it is important to minimize outdoor activities for late night uses. The subject proposal does not include any outdoor activities. In addition, any permits will be conditioned to prohibit loading and outdoor maintenance in late night hours.

Staff has determined that, as explained above, the proposed 24-hour use for the supermarket would not cause detriment to the surrounding area and would substantially conform to the City Council Policy for 24-hour uses.

The proposed 24-hour drugstore drive-through is separated from the adjacent residential parcels only by a drive aisle, landscaping and masonry wall, approximately 60 feet. The drive-through does not include the use of speakers, and customers will interface directly with store personnel. A drugstore drive-through window is not a use that typically attracts long queues and would provide a convenience for area residents. However, the Council Policy states that no drive-through portion of land use shall operate after the hour 10:00 p.m. when adjacent to residentially used, zoned or General Planned properties. Due to the proximity of this drive-through window to residences, the proposed 24-hour operation of the drive-through drugstore window does not conform to the Policy and staff does recommend approval for 24-hour use of the drive-through window.

#### Off-Sale of Alcohol

The developer is requesting a permit to also allow off-sale of alcohol in building M4 (Option 1) or A1 (Options 2 and 3), a supermarket or a general retailer depending on the site plan option selected. This proposal also seeks to continue off-sale of alcohol for the existing supermarket in Building M2 (Tropicana Supermarket). Currently, the off-sale of alcohol is a legal non-conforming use because the use was in place before the Zoning Code was changed in May of 1990 to require conditional use permits to allow off-sale of alcohol in all commercial zoning districts. This supermarket does currently have a license from Alcohol and Beverage Control for off-sale of beer and wine. The sites proposed for off-sale of alcohol are located in the CN Commercial Neighborhood Zoning District, which allows alcohol sales for off-site consumption subject to approval of a Conditional Use Permit. The applicant would also need to obtain a license from Alcohol and Beverage Control (ABC) for the new buildings M4 and A1, which may trigger the need for an ABC Exception permit.

#### Conformance with the Zoning Ordinance:

The project proposes the sale of pre-packaged alcohol for off-site consumption. The Zoning Ordinance requires a Conditional Use Permit for off-sale alcohol in the CN Commercial Neighborhood Zoning District. The Planning Commission may grant the Conditional Use Permit if it makes the following findings, where applicable:

1. If the use is closer than five hundred feet from any other off-sale use, the Planning Commission must find that the proposed off-sale of alcohol would not contribute to an excess concentration of establishments that sell alcohol.
2. If the use is closer than 500 feet from any child care center, elementary school, secondary school, college or university, or one hundred and fifty feet from any residentially-zoned property, the Planning Commission must find that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential and/or school use.

The supermarkets and/or general retailer are located within a larger commercial shopping center. The shopping center contains a variety of commercial uses. Single-family uses are located to the east and the south and the Miller Elementary School is located to the southwest. Both are within 500 feet of the proposed alcohol sales. However, the school district plans to close the Miller Elementary School after the next academic year.

The primary project issues include the appropriateness of the business for alcohol sales, conformance with the Zoning Ordinance and conformance with the Liquor License Exception Permit requirements.



The uses that are proposed for the off-sale of alcohol include an existing market, as well as a new supermarket or a large general retailer. Although not expressly stated in the existing policy, the City of San José, through previous approvals of off-sale establishments, has made a general determination that this type of large-scale business is appropriate for the off-sale of alcohol. General retailers and full-service grocery stores operate in a manner that does not facilitate a patron's quick purchase of alcohol for immediate consumption, often more closely related to alcohol-related incidents. Compared to small convenience stores or liquor stores that offer individually packaged beverage containers for immediate consumption, the sales of alcohol at large retail stores such as the one proposed is incidental to the entire operation of the store and constitutes only a small percentage of overall sales. Therefore, the supermarket and general retailer are typically considered appropriate types of businesses for off-sale of alcohol.

Miller Elementary School is located closer than 500 feet from the proposed retail/grocery store, and residentially-zoned properties are located within 150 feet of the store. However, the front entry of the retail/grocery store is oriented towards the center of the large shopping center, away from the adjacent residential uses and school, in keeping with the other commercial uses located in the commercial center. As mentioned above, Miller Elementary School is planned to be closed after the next academic year. Separating the store from the adjacent residential properties is a parking lot and perimeter masonry wall and landscaping. The walking distance from the store entry to the nearest residence is over 1,000 feet. There will not be direct access to the use from either the residences or the elementary school site. Furthermore, the retail store/supermarket appearance and orientation are compatible with these neighboring uses. The proposed off-sale establishments meet all criteria outlined in the applicable policies and Zoning Code regulations and is therefore considered appropriate for the off-sale of alcohol.

There are currently four existing businesses with off-sale licenses within the project area. Of the four, three will be relocated off-site as part of the proposed redevelopment, resulting in the cancellation of their existing licenses. As a result, the proposed project will result in a net decrease in off-sale of alcohol at this location. There has also been a general net decrease in this area.

A memorandum from the San José Police Vice Unit has determined that the proposed off-sale will not pose a significant law enforcement problem. However, the San José Police have indicated that a liquor license exception will likely be required for the southeast corner as it is significantly over the 20% crime index (See attached memo from the San José Police Vice Unit). The applicant has been advised that a liquor license exception may be required.

#### Outdoor Lighting Policy

The City of San José Outdoor Lighting Policy requires that all outdoor lighting utilize low-pressure sodium (LPS) lights for outdoor, unroofed areas. However, the policy does provide for exceptions to the low-pressure requirement. The Policy allows exceptions to the low-pressure sodium fixture requirement to be applied to pedestrian-oriented nighttime districts, such as the subject project. Exceptions to the use of LPS lighting is considered for pedestrian-oriented nighttime activity areas with business districts adjacent to residential areas where other lighting is crucial to the success of pedestrian-oriented businesses. However, outdoor lighting must be fully shielded, regardless of lumen output, and reduced to the minimum level necessary by 10:00 p.m. or within an hour of the close of business, whichever is later. All proposals for an exception require a photometric study of the proposal, and a referral to the Lick Observatory, and must be the subject of a public hearing.

The applicant is proposing the use of metal halide lighting in the pedestrian and the parking area. Staff has determined that this proposal does meet the requirements to be considered for the LPS exception for pedestrian-oriented nighttime district. The subject site has had a history of a high volume of pedestrian activity. As a prominent and visible center of the community, it has also been designed to accommodate heavy circulation of pedestrians and vehicles. The applicant has stated that the metal halide lighting is needed to increase the perception of safety and to deter possible criminal activity. The proposal and

photometric study of the proposal has been referred to the Lick Observatory. Staff has received a memorandum from the Observatory indicating that the Observatory does not object to the granting of the exception to this project (attached). Additionally, the permit will be conditioned to require that lighting would be reduced to nighttime levels within one hour of close of business operations. The Lighting Policy allows an exception to the illumination of pedestrian walkways. Lighting fixtures that illuminate pedestrian walkways may use light sources other than low-pressure sodium as long as they are fully shielded. The project site includes a significant amount of pedestrian plazas and trellised pedestrian walkways.

The Zoning Code also has a development standard for light fixtures on properties that are adjacent to residential uses. Light fixture heights should not exceed eight feet in height when adjacent to residences, unless the setback of the fixture from the property line is twice the height of the fixture. No ground-mounted light fixture will be allowed to exceed 25 feet in height. Since this is a pedestrian environment, staff recommends that as a condition of approval, light fixtures not be permitted to exceed 16 feet in height.

## **PUBLIC OUTREACH**

The Redevelopment Agency has engaged in an extensive outreach effort for this redevelopment project. The project has been the subject of multiple meetings with different stakeholders starting in the year 2000. The project plans have been presented for discussion at regular Agency, sponsored community meetings on this project and also at meetings for other groups. The different stakeholder groups include the Story Road Business Association, the neighborhood advisory committees for the K.O.N.A. and East Valley/680 Strong Neighborhoods Initiative project areas, the various neighborhood associations along both sides of King Road, as far east as White Road and as far north as Alum Rock, and project area property owners and merchants. The City Public Art staff has also held specialized meetings for the stakeholders to get involved in developing public art for the site. Since the fall of 2001, the Story King Working Group, composed of representatives from several neighborhood associations, both neighborhood advisory committees, La Raza and merchants at the project site, has met with staff and council representatives to review the status of the project, design progress and to offer comments and ideas to the developer. Altogether there have been over 40 community outreach events since summer of 2001 regarding this project.

An official community meeting was held for this project on June 25, 2003, at the Silicon Valley WIN One-Stop located at 1775 Story Road, Suite 120. The meeting site is located directly across Story Road from the project site. Approximately 24 neighboring business owners and residents, including members of the Story and King Working Group, attended the meeting. The majority of the attendees expressed support for the project. Redevelopment staff and Jerry Hunt of Blake Hunt Ventures made a brief presentation on the project plans and the conditional use permit process. The applicant explained that the community meeting is one of several opportunities, including the Planning Commission and City Council hearings, for public information and input. It was explained that the proposal would include different options before the Planning Commission for approval. The developer would implement the most appropriate option after tenants were chosen.

The primary concerns expressed by attendees at the meeting were related to traffic impacts, proposed remodeling of the existing center, proposed types of stores and alcohol sales. The applicant and staff explained that the project will include significant traffic improvements that will be done to mitigate the impacts that will be caused by this project. During construction, traffic will be rerouted to direct traffic away from residential areas. The redevelopment project will include significant street improvements, including construction of new lanes, new traffic signals and undergrounding of utilities. A representative of the Tropicana Market, the existing market proposed to remain on the southwestern parcel, and Redevelopment Agency staff, notified the meeting attendees that the intent is to complete a full remodeling and upgrade of the existing buildings. Community members expressed interest in seeing a hardware store at

the center. Mr. Hunt acknowledged their request and responded that they will work on attracting a hardware store. However, he also responded that whether or not a hardware store owner will be interested will depend on the market demand. The applicant also assured the attendees that there is no proposal to bring in any bars, clubs or liquor stores. The supermarket/general retailer is proposed as the only establishment that will have sale of alcohol for off-site consumption. Mr. Hunt explained that Blake Hunt Ventures is planning to bring a variety of retail stores, including personal service, banks and clothing stores, to the center to meet the needs of the residents in the area.

Public hearing notices were distributed in Spanish and English to the owners and tenants of all properties located within 1000 feet of the project site. The public hearing notice was also published in the San José Mercury News per the Public Outreach Policy for controversial development proposals. Staff has been available to discuss the proposal with members of the public.

## **CONCLUSION**

As discussed above, the project is consistent with the Commercial Design Guidelines and substantially conforms to the relevant City Council Policies: Evaluation of 24-hour uses, Drive-through uses and Outdoor Lighting Policies. The proposed use is consistent with the requirements of the Zoning Code and is compatible with surrounding commercial and residential uses. The proposed project will provide for unified redevelopment of an integrated pedestrian-oriented neighborhood commercial center.

## **RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial, Neighborhood/Community Commercial and Medium Low Density Residential (8 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CP Commercial Pedestrian and the CN Commercial Neighborhood Zoning District.
3. The proposed use is consistent with the General Plan in that the project is consistent with the existing pattern and character of the development of the neighborhood and the site has been and will be used in conformance with the zoning designation of the site.
4. A Negative Declaration has been adopted for a previous and essentially the same project (File No. PP02-02-017 which indicated certain mitigation measures will be incorporated into the project to prevent the occurrence of any significant adverse effect on the environment.
5. The proposed project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code.
6. The site is located in the CP Commercial Pedestrian and CN Commercial Neighborhood Zoning District, which allows retail sales as a permitted use and off-site alcohol sales, after midnight operations (24-hour use) and drive-through uses subject to approval of a Conditional Use Permit.

7. The applicant proposes to offer alcohol for sale for off-site consumption in building M2, an existing market with existing off-sale of alcohol, and buildings M4 or A1, proposed as a supermarket or general retail store.
8. The applicant proposes a drive-through for the proposed pharmacy building M3.
9. The applicant proposes 24-hour use of the drive-through for the proposed pharmacy building M3, which does not conform to the City Council 24-Hour Use Policy.
10. The applicant proposes to operate the supermarket in building M4 24 hours a day.
11. The applicant proposes to utilize non-low-pressure sodium light fixtures in pedestrian areas of the project site.
12. Two Special Use Permits for the demolition of 148,800 square feet of commercial buildings have been approved for this site.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project will be consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The project will not have any adverse effects on public health, safety or welfare and will not be materially injurious to adjacent properties or improvements.
3. The proposed project complies with all applicable provisions of the Zoning Ordinance.
4. The proposed project is in compliance with the California Environmental Quality Act.
5. The proposed project conforms to the Commercial Design Guidelines.
6. The project, with the removal of the 24-hour operation of the drive-through, conforms to the City Council Outdoor Lighting Policy, City Council Policy for the Criteria For The Review of Drive-Through Uses and the City Council Policy for the Evaluation of 24-Hour Uses.
7. The proposed off-sale alcohol meets the requirements of section 20.80.900 of the Zoning Ordinance.
8. This permit includes the removal of 21 ordinance-sized trees of various sizes and species.
9. The permit includes the demolition of an additional 104,700 square feet of commercial buildings in the CP Commercial Pedestrian and CN Commercial Neighborhood Zoning Districts.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or

- c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.
4. After investigation and hearing held pursuant to Chapter 13.32 of the San José Municipal Code, the Director of City Planning finds:
  - a. The affected trees are of a size, type and condition, and in such a location and in such surroundings that removal would not significantly frustrate the purposes of the Chapter as set forth in Section 13.32.010 of the San José Municipal Code in that the tree interferes with the location of a proposed approved structure.
5. The Planning Commission has considered all of the following criteria in evaluating the proposed demolition.
  - a. The failure to approve the permit would result in the creation of continued existence of a nuisance, blight or dangerous condition.
  - b. The failure to approve the permit would jeopardize public health, safety or welfare.
  - c. The approval of the permit would not negatively impact the supply of existing housing stock in the City of San José.
  - d. Both inventoried and non-inventoried buildings, sites and districts of historical significance should not be negatively impacted.
  - e. Rehabilitation or reuse of the existing building would not be feasible.
  - f. The approval of the demolition of the building should facilitate a project which is compatible with the surrounding neighborhood.
  - g. The demolition of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth are hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

## CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and a Certificate of Permit has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be *signed, notarized, and returned* to the Department of Planning, Building and Code Enforcement within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the acceptance form.
2. **Submittals Prior to Recordation/Release.** The following items must be submitted for review and approval for the Director of Planning prior to the recordation of a Certificate of Permit by the County Recorder and/or prior to the release of this Permit to Public Works or the Building Division. *If these items are not submitted within 90 days of the adoption of this Resolution, this Permit will automatically expire regardless of any other expiration dates contained within this Permit.*
  - a. The applicant shall submit complete elevations of the Site Plan Option that will be chosen to be implemented. The elevations shall include existing Buildings R4, R5, M2 and R10 and all proposed new buildings.
  - b. Revised and most updated grading and drainage plan.
  - c. Revised and updated Lighting Plan entitled Site Lighting Plan – L3 (Sheet 2.7)
  - d. Revised grading and drainage plan (Sheet C-3.4a) relabeled as Option 3.
  - e. Revised Site Plan – Option One (Sheet 2.1) showing the correct proposed new building square footage of 239,000 square footage.
3. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.

## CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Story and King Shopping District Submittal for Conditional use Permit," dated April 18, 2003, last revised on September 2, 2003, on file with the Department of Planning, Building and Code Enforcement and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
5. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
6. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement and Building prior to approval of the final inspection of the project.
7. **Decorative Fountain Operation.** The fountains shown on the approved plan set shall be fully lined and be designed to recirculate, and not mist, the water.
8. **Lighting.** On-site lighting shall use be designed, controlled and maintained so that no light source is visible from outside of the property. Electroliers shall not exceed 16 feet above grade. Uplighting is not permitted.
9. **Low Pressure Sodium Lighting Exception.** Non Low-Pressure-Sodium lights shall be lowered to nighttime lighting levels within one hour of the close of business.
10. **Refuse.** All trash areas shall be effectively screened from view, covered and maintained in an orderly state. No outdoor storage is allowed/permitted unless designated on approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
11. **Roof Equipment.** All roof equipment shall be screened from view.
12. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground.
13. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.
14. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning. Signs are shown on plans for illustrative purposes only.
15. **Colors and Materials.** All building colors and materials are to be specified on the approved plan set.
16. **Street Trees.** Street trees as shown on approved plans shall be planted on the street frontage to the satisfaction of the Director of the Department of Streets and Parks. A permit for this is required from the Department of Streets and Parks, (408) 277-4373.

17. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-05576) to the satisfaction of the Director of Public Works:

- a. *Storm Drainage, Sewer Fees.* In accordance with City Ordinance, storm sewer area fees, sanitary sewer connection fees and sewage treatment plant fees are due, less previous credits.
- b. *Geology.*
  - 1) A grading permit is required prior to the issuance of a Public Works Clearance.
  - 2) If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 277-4304 for more information concerning the requirements for obtaining this permit.
  - 3) The Project site is within the State of California Seismic Hazard Zone. A soil investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the Project Engineer and/or City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CDMG Special Publication 117) and the Southern California Earthquake Center ("SCEC" report). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- c. *Undergrounding.*
  - 1) The In Lieu Undergrounding Fee shall be paid to the City for all frontages adjacent to Story and King Road prior to issuance of a Public Works clearance. 100 percent of the base fee in place at the time of payment will be due. (Currently, the base fee is \$224 per linear foot of frontage.)
  - 2) The Director of Public Works may, at his discretion, allow the developer to perform the actual undergrounding of all off-site utility facilities fronting the project adjacent to Story and King Roads. Developer shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works Clearance.
- d. *Transportation.* A traffic impact analysis has been reviewed by City staff. A separate memorandum dated February 8, 2002 has been sent to Planning. The following traffic mitigations are required for this project:
  - 1) Construction of a second northbound and a second southbound left turn lane at the intersection of Story and King Roads.
  - 2) Installation of a traffic signal at the project driveway entrance on King Road (between Story Road and Marsh Road). This signal will serve both the southwest and southeast project sites. This design and configuration of the traffic signal shall conform to the City's Capital project plans (Plans for the Construction of King/Story Road Street and Sidewalk Improvement).
  - 3) Installation of a traffic signal at the project driveway entrance on Story Road, east of King Road.



e. *Electrical.*

- 1) Installation of electroliers along the King & Story Road frontages may be required.
- 2) Relocation of electroliers along project frontages may be required.
- 3) Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10' in commercial areas.
- 4) Painting and renumbering of existing electroliers along project frontage may be required.

f. *Landscape.*

- 1) Install street trees within public right-of-way along entire street frontage per City standards. Trees shall be installed in cut-outs at the back of curb.
- 2) The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.
- 3) Contact the City Arborist at (408) 277-2756 for the designated street tree.

g. *Median Island.* Construction of a full width landscaped median island on both Story and King Roads is required.

h. *Street Improvements.*

- 1) Project shall improve the westside of Story Road from the project's southerly boundary to the intersection of Story Road and Marsh Road to the satisfaction of the Director of Public Works.
- 2) Note: The project shall conform to the City's Capital project (Plans for the Construction of King/Story Road Street and Sidewalk Improvement) within this project vicinity.
- 3) Close unused driveway cut(s).
- 4) Proposed driveway widths to be 26' min.
- 5) Install handicap ramps at opposite returns across King Road.
- 6) Reconstruction of full-street along King Road frontage including curb, gutter, sidewalk, and pavement sections may be required pending a pavement investigation by our Materials laboratory.
- 7) Reconstruction of half street along Story Road frontage including curb, gutter, sidewalk, and pavement sections may be required pending a pavement investigation by our Materials laboratory.
- 8) Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.

i. *SNI.* This project is located adjacent to the K.O.N.A. SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.

- j. *Construction Agreement.* The applicant will be required to obtain a Public Works Clearance prior to the issuance of a Building Permit. If the frontage improvements are not constructed by the planned Capital project, the clearance will require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
- k. *Storm Water Management Plan.* This project results in a land disturbance of more than one acre. Prior to the commencement of any clearing, grading or excavation, the project shall comply with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit as follows:
  - 1) The applicant shall develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of storm water pollutants including sediments associated with construction activities.
  - 2) The applicant shall file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB).

Along with these documents, the applicant may also be required to prepare an Erosion Control Plan. The Erosion Control may include BMPs as specified in the California Storm Water Best Management Practice Handbook for reducing impacts on the City's storm drainage system from construction activities.

Prior to the issuance of a grading permit, the applicant shall submit copies of the SWPPP, NOI and Erosion Control Plan (if required) to the City Project Engineer, Department of Public Works, Room 308, 801 North First Street, San José, California 95110-1795. To obtain an NOI application and further information about the Erosion Control Plan and the NPDES permit requirements, please call the Department of Public Works at (408) 277-5161 or the SWRCB at (916) 657-1146.

- l. *Reclaimed Water Irrigation Systems.* Pursuant to San José Municipal Code, Section 15.10.480, irrigation systems for all landscaped areas in excess of 10,000 square feet, unless specifically exempted by the Director of Planning, shall be designed and installed to allow the current and future use of reclaimed water to the satisfaction of the Director of Public Works.
  - m. *Storm Water Stenciling.* All drain inlets shall be labeled "No Dumping--Flows to Bay." Please contact the City of San José, Department of Public Works, at (408) 277-5161 to obtain free stencils.
18. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* The permit file number, CP03-030, shall be printed on all construction plans submitted to the Building Division.
  - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - c. *American Disabilities Act.* The applicant shall provide appropriate access as required by the American Disabilities Act (ADA).

- d. *Mechanical Equipment.* No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise level from such equipment will not exceed 55 DBA at the residential property line.
- e. *Demolition Permit.* Obtainment of a Demolition Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions. No demolition of the structure may be implemented unless and until the Building Division issues a Demolition Permit pursuant to Section 301 of the Uniform Building Code, as adopted pursuant to the provisions of Chapter 17.04 of Title 17 of the San José Municipal Code.
- f. *Recycling.* Scrap construction and demolition material should be recycled when. Integrated Waste Management staff at 277-5533 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
- g. *Dust Control Measures.* While the project is under construction, the applicant shall employ effective dust control measures to prevent dust and other airborne matter from leaving the site. Applicant shall implement the following construction practices during all phases of construction on the project site.
  - 1) Use dust-proof chutes for loading construction debris onto trucks.
  - 2) Water to control dust generation during demolition of structures and break-up of pavement.
  - 3) Cover all trucks hauling demolition debris from the site.
  - 4) Water or cover stockpiles of debris, soil, sand, or other materials that can be blown by the wind.
  - 5) Cover all trucks hauling soil, sand, or other loose materials, or require trucks to maintain at least two feet of freeboard.
  - 6) Sweep daily (preferably with water sweepers) all paved access road, parking areas, and staging areas at construction sites.
  - 7) Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
  - 8) Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.)
  - 9) Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
  - 10) Replant vegetation in disturbed areas as quickly as possible
- h. *Inlet Filters.* The project developer shall install inlet filters in all new on-site storm drainage inlets. These filters shall be installed, maintained and replaced by a qualified consultant hired by the property owner. Copies of all inspection and maintenance records shall be provided to the City upon request. The project developer shall implement a maintenance program for these inlet filters that includes but is not limited to the following measures:

- 1) Installation. The inlet filters shall be installed by a qualified individual in conformance with the manufacturer's specifications. Installation records shall be maintained by the project developer and subsequent property owner.
  - 2) Maintenance Record. The property owner must keep a record available for inspection on the project site of all inspections and maintenance of the inlet filters.
  - 3) Regular Sweeping. Paved surfaces subject to runoff shall be swept regularly during dry periods to remove dirt, silt and other loose debris.
  - 4) Regular Inspections. The inlet filters shall be inspected monthly between September and April, and the absorbent material shall be replaced by a qualified individual as necessary to ensure the filters are functioning properly.
  - 5) Replacement of Absorbent Material. The absorbent material shall be replaced by a qualified individual in conformance with the manufacturer's specifications. Care should be taken to avoid spilling the contaminated material into the drainage system.
  - 6) Disposal of Used Absorbent Material. Used absorbent material shall be disposed of in conformance with all applicable local, state and federal regulations.
  - 7) Replenishment of Absorbent Materials Supply. The property owner shall keep a sufficient amount of absorbent material on hand to replace the amount of installed absorbent material plus a reserve to handle emergencies.
- j. *Archaeology.* There shall be monitoring of site excavation activities to the extent determined by a qualified professional archaeologist to be necessary to insure accurate evaluation of potential impacts to prehistoric and/or historic resources.
- 1) If no resources are discovered, the archaeologist shall submit a report to the Director of Planning verifying that the required monitoring occurred and that no further mitigation is necessary.
  - 2) If evidence of any archaeological, cultural and/or historical deposits are found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the satisfaction of the Director of Planning, describing the testing program and subsequent results. These reports shall identify any program mitigation that the Developer shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial and curation of archaeological resources).
  - 3) In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:
    - (a) In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified by the developer and shall make a determination as to whether the remains are native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission, who will attempt to identify descendants of the deceased Native Americans. If no satisfactory agreement can be reached as to the disposition of the

remains pursuant to this State law, then the landowner shall reinter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

- (b) A final report shall be submitted to the Director of Planning prior to release of a Certificate of Occupancy. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resource analysis methodology and conclusions and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the Director of Planning.

- 19. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
- 20. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
- 21. **Fire Flow.** Required fire flow for the site is 4,500 gpm, or as otherwise specified in writing from the Fire Department.
- 22. **Fire Extinguisher System.** Building(s) shall be provided with an automatic fire extinguisher system. Systems serving more than 100 heads shall be supervised by a remote alarm system to the satisfaction of the Fire Chief.
- 23. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided as required by the Fire Department.
- 24. **Hazardous Materials Storage.** This permit does not include any approval of facilities or areas on, within, or under the site to be used for the storage of hazardous, toxic, flammable, or combustible materials, and such facilities or areas are subject to review under separate Site Development Permit.
- 25. **Tree Removal Mitigation.** The project developer shall replace the trees to be removed with new landscaping as shown on the approved Landscape Plans included in this permit.
- 26. **Noise.** The developer shall implement the following mitigation to meet the City of San José General Plan Noise Standards:
  - a. Temporary noise barriers shall be erected around the perimeter of the project site where it adjoins residences prior to and during construction activities.
  - b. Available noise suppression devices shall be used to maintain and muffle combustion engine-driven construction equipment.
  - c. Noise barriers and noise control blankets shall be used to shield stationary equipment from nearby noise-sensitive receptors whenever possible.
  - d. The applicant shall avoid the use of staging equipment within 200 feet of noise-sensitive receptors whenever possible.

- e. The applicant shall designate a noise disturbance coordinator and post the name and phone number of this person conspicuously at the site. The disturbance coordinator shall respond to complaints regarding noise and take the necessary steps to mitigate the problem.
- 27. **Loading Dock Activities.** Loading dock activities adjacent to residential property lines shall be limited to the hours of 7 a.m. to 10 p.m.
- 28. **Parking Lot Cleaning.** Parking lot cleaning adjacent to residential property lines shall be limited to the hours between 7 a.m. to 10 p.m.
- 29. **Operating Hours.** This facility, with the exception of the supermarket in building M4, shall be limited to operation between the hours of 6 a.m. to midnight. The supermarket, which will be located in building M4 in the southeastern parcel may operate 24 hours.
- 30. **Drive-through.** Amplified speakers are not permitted at the drugstore drive-through.
- 31. **Noise Mitigation.** Construction of all structures approved by this permit shall include implementation of the noise mitigation measures identified in the noise report titled, "Story and King Commercial Center Redevelopment Environmental Noise Assessment San José, California," dated December 27, 2001, prepared by Illingworth & Rodkin, Inc., as required by the Director of Planning.
- 32. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public streets each working day. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
- 33. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
- 34. **Off-sale of Alcohol.** Off-sale of alcohol, with appropriate ABC approvals/requirements, will be permitted in the existing market in building M2 and a supermarket or general retailer, located in buildings M4 or A1 only. This permit does not give legal non-conforming status to other off-sale establishments.
- 35. **Maximum Individual Occupant Square Footage.** In buildings located in the CP Commercial Pedestrian Zoning District, the occupancy of these specific uses in a single building shall be limited as follows: (1) personal service shop – 2,500 square feet; (2) eating, drinking or entertainment establishment – 5,000; (3) and all other uses – 15,000 square feet.

## CONDITIONS SUBSEQUENT

- 1. **Permit Expiration.** This Conditional Use Permit shall automatically expire in two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.

c: Building Division (2)

Engineering Services

San José Redevelopment Agency. Attn: Anne Stedler. 50 W. San Fernando 9<sup>th</sup> fl. San José, CA 95113

Blake Hunt Ventures San José L.L.C. 1660 Olympic Blvd. Suite 300. Walnut Creek, CA 94596.

Carolyn Gonot, VTA Congestion Mgmt. Program. 3331 North First St., Bldg. B. San José, CA 95134

Attachments